

8/19/04

### **COMPENSATION AND ESCROW AGREEMENT**

This Escrow Agreement ("Agreement") is entered into as of August 25, 2004, by and between the United States Environmental Protection Agency, Region 8 ("EPA"), Glacier Bank (the "Bank") and Trudy Siefke, hereinafter referred to collectively as the "Parties".

WHEREAS, the response action at the Libby Asbestos Site (the "Site"), Lincoln County, Montana implemented by EPA is authorized by Section 104 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9601 et seq., and the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"), 40 C.F.R. Part 300;

WHEREAS, Trudy Siefke is the owner of the land and improvements known as 3496 Highway 2 South, Libby, MT 59923 (the "Property") located within the Site. Trudy Siefke maintains a residence on the Property and had several small buildings as well as items of personal property located on the Property;

WHEREAS, on August 18, 2001, EPA issued an Amendment to an Action Memorandum which was originally issued on May 23, 2000 in which EPA documented the determination that cleanup was necessary at the Property because of asbestos contamination. The selected response action implemented at the Property resulted in the demolition and/or partial demolition of small buildings and the disposal of contaminated personal items which were either not amenable to cleaning or were more expensive to clean than replace;

WHEREAS, Trudy Siefke certifies that the Property and personal property were acquired with no knowledge of the asbestos contamination. Trudy Siefke has granted to EPA, its employees, agents, contractors and representatives access to the Property for the purpose of implementing the selected response action, including the demolition and disposal of contaminated buildings, equipment, inventory and personal items;

WHEREAS, EPA and Trudy Siefke have previously executed a settlement agreement, dated April 10, 2002, for reimbursement for buildings and personal property disposed of pursuant to cleanup requirements. That agreement did not cover reimbursement for one of the buildings, the "Steel Shed", which required partial demolition. The Steel Shed contained a variety of equipment, including contaminated equipment from the Zonolite Mine. Remaining restoration of the Steel Shed is the restoration of a second story loft including, wiring, insulation, shelves and work benches.

WHEREAS, the property and assets as yet unreimbursed for in the Steel Shed have been appraised by Charles Lapp, a certified appraiser with Alpine Auction and Appraisal Services, Inc., and the fair market value determined to be a total of \$3,050. An evaluation of replacement cost by Camp, Dresser and McKee and ER, Inc., indicates that it will cost approximately \$25,000

to replace the second story loft, wiring, insulation, shelves and work benches.

NOW, THEREFORE, in consideration of the mutual promises, obligations, and agreements set forth below, the parties agree as follows:

### **Section 1. Definitions**

As used in this Agreement:

(a) The term "EPA" shall mean the United States Environmental Protection Agency, Region 8.

(b) The term "Bank" shall mean the Glacier Bank of Libby, Montana.

(c) The term "Funds" shall mean those monetary funds placed by EPA into an escrow account at Glacier Bank for the purposes established in this Agreement.

(d) The term "Escrow Manager" shall mean the Bank official charged with implementing the disbursement of Funds pursuant to this Agreement.

(e) The term "Allowable Expense" shall mean those expenses related to the restoration of the Steel Shed's second story loft, including wiring, insulation, shelves and work benches.

(f) The term "Escrow Account" shall mean the account setup, maintained and disbursed by the Bank for the purposes established herein.

### **Section 2. Cash Payment to Trudy Siefke And Use of Payment**

EPA shall pay to Trudy Siefke the sum of THREE THOUSAND FIFTY DOLLARS (\$3,050) within thirty (30) days of execution of this Agreement by EPA. The cash payment shall be used by Trudy Siefke for expenses related to the restoration of the Steel Shed's second story loft, including wiring, insulation, shelves and work benches. Trudy Siefke shall provide to EPA an itemized accounting and receipts showing the expenditure of the cash payment for the purposes described herein.

### **Section 3. Establishment of Escrow Account**

EPA shall transfer to the Bank NINETEEN THOUSAND FOUR HUNDRED FIFTY DOLLARS (\$19,450) within thirty (30) days of execution of this Agreement by EPA. This money shall constitute the Funds and shall be placed by the Bank into a non-interest bearing account which shall become the Escrow Account. EPA shall pay the Bank \$250 for the performance of its duties under this Agreement.

### **Section 4. Disbursement of the Funds**

The Escrow Manager shall disburse the Funds in response to bi-weekly draws presented by Trudy Siefke or her representative which include a signed certification that all the bills included therein are for expenses related to the restoration of the Steel Shed's second story loft, including wiring, insulation, shelves and work benches. All bills shall be from licensed independent contractors, except those relating to the restoration of shelves and work benches, which can be applied for by Trudy Siefke with a written certification for each expenditure indicating that it was for the restoration of the second story loft. All work performed shall be pursuant to valid city permits, where such permits are required. The Escrow Manager shall perform inspections of all the work.

#### **Section 5. Termination of the Escrow Account**

The Escrow Manager shall continue the disbursements until the Funds are exhausted or until September 30, 2005, whichever is earlier. If any portion of the Funds are left in the Escrow Account after September 30, 2005, those Funds shall be returned to EPA and the Escrow Account shall be terminated. Exhaustion of the Funds on or before September 30, 2005 shall also constitute a termination of the Escrow Account. If EPA, the Escrow Manager, or the Bank determines that the Funds have been applied for or used for activities other than restoration of the Steel Shed's second story loft, including wiring, insulation, shelves and work benches, EPA may instruct the Bank and/or Escrow Manager to immediately terminate the Escrow Account. In such case, no further restoration funds will be provided and all claims against EPA will be considered released pursuant to Section 12.

#### **Section 6. Express Powers of the Escrow Manager and the Bank**

Without in any way limiting the powers and discretions conferred upon the Escrow Manager and the Bank by the other provisions of this Agreement or by law, the Escrow Manager and the Bank are expressly authorized and empowered:

(a) To make, execute, acknowledge and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to implement the powers herein granted; and

(b) To make all distributions and payments as described herein.

#### **Section 7. Monthly Valuation**

The Escrow Manager shall furnish to the EPA a statement confirming the value of the Escrow Account on at least a monthly basis.

#### **Section 8. Instructions to the Escrow Manager and Bank**

All orders, requests and instructions by EPA to the Escrow Manager and/or Bank shall be in writing. The Escrow Manager and the Bank shall be fully protected in acting without inquiry in accordance with EPA's orders, requests and instructions. The Escrow Manager and the Bank

shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of EPA hereunder has occurred.

### **Section 9. Notice**

All notices under this Agreement will be sent by overnight delivery service or certified or registered mail to the address of the applicable party set forth below:

*If to EPA:*

Ms. Peggy Churchill, EPR-SR  
U.S. Environmental Protection Agency  
999 18<sup>th</sup> Street, Suite 300  
Denver, CO 80202

*If to the Bank or Escrow Manager:*

Mr. Gary Spencer  
Glacier Bank  
615 California Avenue  
Libby, Montana 59923

*If to Trudy Siefke:*

Ms. Trudy Siefke  
3496 Highway 2 South  
Libby, Montana 59923

### **Section 10. Amendment of Agreement**

This Agreement may be amended by an instrument in writing executed by EPA, the Bank and Trudy Siefke.

### **Section 11. Immunity**

The Escrow Manager shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of the Escrow Account, or in implementing any orders, requests or instructions by EPA issued in accordance with this Agreement.

### **Section 12. Release of Claims**

Trudy Siefke hereby agrees that the payments made pursuant to this Agreement shall

